

Exhibit 1

Decision and Direction of Election

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION ONE, SUBREGION 34**

**CLARKWESTERN DIETRICH BUILDING
SYSTEMS, LLC**

Employer

and

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO-CLC**

Petitioner

Case 01–RC–264014

DECISION AND DIRECTION OF ELECTION¹

I. INTRODUCTION

On August 3, 2020,² United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (the Petitioner), filed a representation petition seeking to represent certain employees of ClarkWestern Dietrich Building Systems, LLC (the Employer), at its facility in Bristol, Connecticut. A hearing was held before a hearing officer of the National Labor Relations Board (the Board) via videoconference on August 24. At hearing, the parties raised two issues: (1) whether additional classifications are appropriately included in a production and maintenance unit and (2) whether to conduct a manual or mail-ballot election. The parties orally provided their final positions on these issues prior to the close of the hearing.

The parties disagree on whether Team Leads, Team Shipping Leads, Maintenance Team Leads, Maintenance Facilitators and Schedulers should be included in a unit of production and

¹ The petition in this case was filed under Section 9(c) of the National Labor Relations Act (the Act). The parties were provided opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

² All dates are for the year 2020 unless otherwise noted.

maintenance employees. Eleven people occupy these five positions. There a hundred and fifteen possible voters in the production and maintenance bargaining unit. Because the dispute over the inclusion of these five classifications involves less than ten percent of the potential bargaining unit, I deferred litigation on the eligibility issues and ruled that people in the disputed classifications would vote subject to challenge and their eligibility would be resolved in a post-election proceeding, if necessary. I reaffirm that decision.³

The sole remaining issue in this case is whether to conduct the election manually or by mail ballot. The Employer argues that, with certain precautions to combat the possible spread of COVID-19, a manual election is the most appropriate method. The Petitioner asserts that, given the constraints of the COVID-19 pandemic, a mail-ballot election is the only safe method for conducting the election.

Having considered the parties' positions and the entire record, I am directing this election to be conducted by mail ballot. To give context for my discussion of this matter, I begin with background facts relating to the Employer's operations, the petition, and certain stipulations to which the parties have agreed. I then summarize the parties' positions with respect to the voting method for this case. Next, I review Board law on election methods and recent cases arising during the COVID-19 pandemic. Following that review, I discuss the application of Board law to the circumstances in this case. Finally, I conclude with my findings.

II. BACKGROUND

The Employer is an Ohio company with a facility located at 780 James P. Casey Road in Bristol, Connecticut, where it produces steel frames used to build hospitals and high-rises.

The Petitioner seeks to represent a unit of all full-time and regular part-time production and maintenance workers at the Employer's facility. At hearing, the parties stipulated that any such appropriate unit should include operators, maintenance technicians, and maintenance mechanics; and exclude all temporary employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act. They also agree that the disputed voters include team leads, team leads shipping, maintenance team leads, maintenance facilitators, and schedulers.

III. THE PARTIES' POSITIONS

A. The Employer's Position

The Employer requests a manual election to be conducted at its plant. Citing to *San Diego Gas & Electric*, 325 NLRB 1143 (1998), the Employer argues that this case presents no basis for directing a mail-ballot election: employees are not scattered and there are no extraordinary circumstances present.

³ Section 102.64(a) of the Board's Rules and Regulations permits me to defer resolution of this matter, as necessary, until after the election. Section 102.64(a) remains unchanged despite the December 18, 2019 amendments to the Board's representation rules. *AFL-CIO v. NLRB*, Civ. No. 20-CB-0675 (2020).

The Employer asserts that its safety measures have been effective in preventing the spread of the disease. The Employer has not had a confirmed COVID-19 case at its plant since April 24. Additionally, the Employer also argues that because Connecticut has issued several orders to reopen the state, circumstances have changed such that the Board may safely conduct a manual election.

The Employer entered a signed declaration from its plant manager of the Bristol facility, effectively detailing its proposed compliance with General Counsel Memorandum GC 20-10 (issued July 6, 2020). Additionally, the Employer has offered the following precautions that it already has in place or will put in place for the election:

- nightly cleaning of the plant,
- weekly fogging of the plant with a virus killing disinfectant
- fogging the plant on the night before the election, and
- placing an air purifier in the voting area.

The Employer proposes to hold the election within two adjoining rooms: the company breakroom and training room. The rooms are connected by a door. The breakroom is 44 feet by 20 feet, and the training room is 20 feet by 40 feet. The Employer states that this voting area is spacious enough to allow for safe social distancing during the election. For voting times, the Employer proposes two voting sessions: one from 2:30 p.m. to 4 p.m. and a second from 8:30 p.m. to 9 p.m.

Finally, the Employer asserts that voter participation in a manual election is generally higher because all employees can vote quickly while they are at work. The Employer also notes that mail-ballot elections risk that ballots will be lost or misdirected by the United States Postal Service.

B. The Petitioner's Position

The Petitioner takes the position that a mail-ballot election is the only safe method due to the COVID-19 pandemic. Relying on *San Diego Electric & Gas*, the Petitioner argues that the pandemic presents extraordinary circumstances that warrant a mail-ballot election.

IV. BOARD LAW & RECENT CASES

It is well settled that the Board leaves decisions on the mechanics of an election, including the method, to the discretion of its Regional Directors. *Ceva Logistics U.S., Inc.*, 367 NLRB 628, 628 and cited cases (2011). In *San Diego Gas & Electric*, 325 NLRB at 1145 (1998), the Board articulated certain guidelines for its Regional Directors to consider when deciding whether to conduct a mail-ballot election:

[T]he Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are "scattered" because of their job duties over a wide geographic area; (2) where eligible voters are "scattered" in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress.

In addition to the above, the Board recognized that its Regional Directors may consider “other relevant factors,” and that “extraordinary circumstances” may permit a mail-ballot election for reasons other than those the Board explained in its guidelines. *Ibid.*

Although the Board has expressed a general preference for manual balloting, it has never hesitated to ballot by mail when the circumstances warrant it. Indeed, the Board’s preference for manual elections is not to be interpreted as a suggestion that mail balloting is somehow inferior or a less reliable or effective means of determining employees’ representational desires. The Board noted as follows in *London’s Farm Dairy, Inc.*, 323 NLRB 1057, 1058 (1997):

[W]hile we agree with our dissenting colleague that the Agency has a proud long tradition of conducting elections by manual balloting and that most elections have been and are conducted manually, it has an equally long history of conducting elections by mail. From the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail. See, for example, *Lykes Bros. S.S. Co.*, 2 NLRB 102, 108, 111 (1936); *United Press Assns.*, 3 NLRB 344, 352 (1937); *Pacific Greyhound Lines*, 4 NLRB 520, 539 (1937); *Pacific Lumber Inspection Bureau*, 7 NLRB 529, 534 (1938); *Salt River Valley Water Users Assn.*, 32 NLRB 460, 472 (1941); *Continental Bus Systems*, 104 NLRB 599, 601(1953); and *National Van Lines*, 120 NLRB 1343 (1958).

Additionally, the Board has recently denied employers’ requests for review in other cases regarding Regional Directors’ decisions on the method for elections. In each of the cases listed below, the Board noted that the COVID-19 pandemic presented extraordinary circumstances warranting a mail-ballot election. The Board also noted in each of these cases that it “will continue to consider whether manual elections should be directed based on the circumstances then prevailing in the region charged with conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10.”

1. In *Tredroc Tire Services*, 13-RC-263043 (August 19, 2020), the Board denied review of that Regional Director’s decision to conduct a mail-ballot election, even though the employer proposed compliance with GC Memorandum 20-10 and a voter releasing plan that staggered voting into groups with only three voters per group.
2. In *Pace Southeast Michigan*, 07-RC-257046 (August 7, 2020), the Board denied review of that Regional Director’s decision to conduct a mail-ballot election, even though the employer proposed holding the election in large room with markings for social distancing, and providing plexiglass dividers, personal protective equipment (PPE), and hand sanitizer.
3. In *Sunsteel LLC*, Case 19-RC-261739 (August 4, 2020), the Board denied review of that Regional Director’s decision to conduct a mail-ballot election, even though the employer proposed a voting area with separate entrances for entering and exiting; floor markings for foot traffic and for social distancing; scheduled release times for voters; sufficient spacing for safe distancing between the voting booth and the separate tables

for the Board agent, observers, and ballot box; plexiglass barriers; and cleaning consistent with guidelines established by the Center for Disease Control and Prevention (CDC).

Finally, in *Touchpoint Support Services*, Case 07-RC-258867 (May 18, 2020), the Board denied review of the Regional Director's decision to conduct a mail-ballot election during the COVID-19 pandemic. In requesting review, the employer raised issues concerning potential disenfranchisement of voters if ballots were delayed in the mail. The Board noted, "While such concerns could be relevant to whether a mail-ballot election is appropriate, the circumstances presented here fail to establish that the Regional Director abused her discretion." The Board further noted that actual evidence of disenfranchisement of voters could be raised in post-election objections.

V. DISCUSSION

Although the Board's longstanding policy is that elections should generally be conducted manually, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. NLRB Casehandling Manual Part Two Representation Proceedings, Sec. 11301.2. As explained above, this includes four specific situations addressed by the Board: when voters are "scattered" over a wide geographic area; when voters are "scattered" in time due to their schedules; when voters are involved in strikes, lockouts, or picketing; and in situations involving extraordinary circumstances. *San Diego Gas & Electric*, 325 NLRB at 1145. The present case deals only with whether the public health concerns presented by the COVID-19 pandemic constitute extraordinary circumstances.

As further discussed below, I find that the continuing COVID-19 pandemic constitutes extraordinary circumstances warranting a mail-ballot election in this case.

A. Response to the Parties' Arguments

I agree with the parties that *San Diego Gas & Electric* is controlling in determining whether a mail-ballot election is appropriate.

The Employer's asserts that voter participation in manual elections is generally higher than in mail-ballot elections, but the Board majority in *San Diego Gas & Electric* addressed this very issue. The majority stated that

because mail ballot elections have, by design, largely been limited to situations where factors were present which were likely to inhibit voter participation if the election were conducted manually, there is no reason to believe that participation in those particular elections would necessarily have been higher had they been manual elections.

San Diego Gas & Electric, 325 NLRB at 1146. Given the constraints of the current pandemic, in which many federal, state, and local governments have cautioned individuals against unnecessary

travel,⁴ I find that the present case is of the type contemplated by the majority in *San Diego Gas & Electric*.

I disagree with the Employer's argument that Connecticut's reopening supports holding a manual election. I address this argument in the following section, in which I detail the prevailing circumstances of COVID-19 in Connecticut.

Although the Employer raises the specter of possible voter disenfranchisement due to lost or misdirected ballots through the mail, I am not persuaded by the possibility of such an occurrence. Nonetheless, and as the Board noted in *Touchpoint Support Services*, above, the Employer may raise matters of actual voter disenfranchisement, if applicable, through post-election objections.

B. The Prevailing Circumstances of COVID-19 in Connecticut

As of the writing of this decision, the Connecticut Department of Public Health reports 53,350 total COVID-19 cases and 4,465 COVID-19-associated deaths.⁵ Bristol, specifically, has had 658 confirmed COVID-19 cases and 64 confirmed deaths.

Although the Employer has not had a COVID-19 case at its facility since April 24, and it has proposed screening questions to assess employees' risk for possibly having contracted COVID-19, the usefulness of such screening questions is debatable based on the CDC's assessment of transmission of COVID-19 in non-symptomatic individuals. The CDC has stated that its "current best estimate" is that 50 percent of COVID-19 transmission occurs prior to the onset of symptoms, and that 40 percent of people with COVID-19 are asymptomatic. However, the CDC also recognizes that these estimates remain uncertain.⁶ Despite any uncertainty that the CDC has over these estimates, Connecticut Governor Ned Lamont has echoed the CDC's assessments in his Executive Order No. 7000, dated August 21, stating that "public health experts have determined that it is possible to transmit COVID-19 even before a person shows symptoms and through aerosol transmission."⁷

⁴ For example, the CDC's webpage on "Travel during the COVID-19 Pandemic" states, "Travel increases your chance of getting and spreading COVID-19. **Staying home is the best way to protect yourself and others from COVID-19.**" (Emphasis in original.) <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html> (last visited August 28, 2020).

⁵ "Connecticut COVID-19 Data Tracker," <https://portal.ct.gov/Coronavirus/COVID-19-Data-Tracker> (last visited August 28, 2020).

⁶ "COVID-19 Pandemic Planning Scenarios," <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html> (last visited August 28, 2020).

⁷ I have taken administrative notice of this executive order.

I also note that Connecticut has a three-phase approach to reopening, and it has been at Phase 2 of that plan since June 17.⁸ Under Phase 2, and as of July 3, indoor private gatherings are limited to 25 people. As mentioned earlier, the Employer asserts that Connecticut's reopening guidelines support holding a manual election. However, Connecticut continues to take steps to prevent unnecessary person-to-person contact. For example, under Connecticut Public Act No. 20-3, **all** (emphasis added) voters may vote by mail in the upcoming general election on November 3 due to COVID-19.⁹ Additionally, and although manufacturing facilities have been open since Phase 1, the Connecticut Department of Economic and Community Development has issued "Safe Workplace Rules for Essential Employers," which apply to manufacturing facilities.¹⁰ Among the listed rules, these include the following:

- Eliminate all non-essential workplace travel.
- Where possible, close or restrict break rooms and cafeterias and have employees bring lunches from home and eat at workstation or in cars.
- Increase ventilation rates and increase the percentage of outdoor air that circulates into the system where possible.

C. The Election Method for this Case

Under different circumstances, I would almost certainly direct a manual election in this case. However, based on all the above, I find that the ongoing COVID-19 pandemic presents extraordinary circumstances warranting a mail-ballot election. I am not satisfied that the risk posed by COVID-19 is sufficiently ameliorated by the Employer's proposal.

In addition to the number of positive cases in Bristol and the possibility of transmitting COVID-19 while individuals show no symptoms, an indoor election confined to breakroom and training room presents its own concerns. First, although the potential one hundred and fifteen voters are spread out across at least three shifts, the first and second shift have fifty-six and fifty-one of those voters, respectively. Even with hour-and-a-half voting sessions, the record provides no indication that employees would likely vote in groups smaller than twenty-five. While the Employer has offered to place an air purifier in the voting area, the record contains no details as to the ventilation for the proposed voting area. Finally, a proposal to hold an election in a breakroom appears misguided in light of Connecticut's Safe Workplace Rules for Essential Employees, which

⁸ "Latest Guidance," <https://portal.ct.gov/Coronavirus/Covid-19-Knowledge-Base/Latest-Guidance#> (last visited August 28, 2020).

⁹ I have taken administrative notice of this public act. See also "Absentee Voting," <https://portal.ct.gov/SOTS/Election-Services/Voter-Information/Absentee-Voting> (last visited August 28, 2020).

¹⁰ "Latest Guidance," above at fn. 11; and "Safe Workplace Rules for Essential Employers," <https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/Safe-Workplace-Rules-for-Essential-Employers> (last visited August 28, 2020).

suggests that employers should close or restrict access to such rooms. I find that these concerns about the proposed voting area weigh against a manual election.

In light of these considerations, I find that a mail-ballot election, which removes the need for any person-to-person contact, is the safest election method for all involved parties.

VI. CONCLUSION

Based on the discussion above, I am directing a mail-ballot election in this case. I find that the following bargaining unit is appropriate under the Act:

All full-time and regular part-time production and maintenance including operators, maintenance technicians, and maintenance mechanics; but excluding all temporary employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

VII. OTHERS PERMITTED TO VOTE

At this time, I have made no decision on whether **team leads, team leads shipping, maintenance team leads, maintenance facilitators, or schedulers** are included in, or excluded from, the bargaining unit. Individuals in these classifications may vote in the election, but their ballots will be challenged because their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. On Wednesday, September 16, 2020, ballots will be mailed to voters by National Labor Relations Board, Subregion 34. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Subregion 34 office by close of business on Monday, October 5, 2020.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Friday, September 25, 2020, should communicate immediately with the National Labor Relations Board by either calling the Subregion 34 Office at (860) 240-3522 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities, including but not limited to Shelter in Place orders, travel restrictions, social distancing

and limits on the size of gatherings of individuals, I further direct that the ballot count will take place virtually, on a platform (such as Skype, Zoom, or WebEx) to be determined by the Regional Director. Each party will be allowed to have one observer attend the virtual ballot count.

B. Voting Eligibility

Eligible to vote are those unit employees who were employed by the Employer during the payroll period ending **Sunday, August 23, 2020**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, employees engaged in an economic strike that commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military service of the United States may vote by mail in the same manner and pursuant to the same voting schedule as established herein for all other Unit employee voting.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period for eligibility; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional director and the parties by **Wednesday, September 2, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the

website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with these requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Notices of Election

Notices of Election will be electronically transmitted to the parties, with this Decision. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. You must also distribute the Notice of Election electronically to any employees in the unit with whom you customarily communicate electronically. In this case, the notices must be posted and distributed **before 12:01 a.m. on Friday, September 11, 2020**. If the Employer does not receive copies of the notice with this decision, it should notify the Regional Office immediately. Pursuant to Section 102.67(k), a failure to post or distribute the notice precludes an employer from filing objections based on non-posting of the election notice.

To make it administratively possible to have election notices and ballots in a language other than English, please notify the Board agent immediately if that is necessary for this election. If special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board agent as soon as possible.

Please be advised that in a mail ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street, SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: August 31, 2020

A handwritten signature in black ink, appearing to read "Paul J. Murphy". The signature is fluid and cursive, with the first name "Paul" being the most prominent.

Paul J. Murphy, Acting Regional Director
National Labor Relations Board
Region One, Subregion 34